**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR**

**MONDAY, THE 26TH MARCH 2007 / 5TH CHAITHRA 1929**

**WP(C).No. 9355 of 2007(L)**

**PETITIONER:**

**MRS. GEELA GEORGE,**
**PROPRIETRIX, M/S. E.FORCE, NOW AT 28/215 B,**
**PANAMPILLY NAGAR, ERNAKULAM, KOCHI-36.**

**BY ADV. SRI.E.P.GOVINDAN**

**RESPONDENTS:**

1. **ASST. COMMISSIONER (WORKS CONTRACT),**
   **OFFICE OF THE DEPUTY COMMISSIONER,**
   **COMMERCIAL TAXES, ERNAKULAM.**

2. **STATE OF KERALA, REPRESENTED BY**
   **SECRETARY, TAXES DEPARTMENT, GOVT. SECRETARIAT,**
   **TRIVANDRUM.**

**BY**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**W.P.(C) NO.9355/2007**

## APPENDIX

**PETITIONER'S EXHIBITS**

**EXT.P1:- COPY OF THE ASSESSMENT ORDER DT.26.11.2006 PASSED BY THE FIRST RESPONDENT FOR THE YEARS 2003-04.**

**EXT.P2:- COPY OF THE ASSESSMENT ORDER DT.26.11.2006 PASSED BY THE 1ST RESPONDENT FOR THE YEARS 2004-05.**

**EXT.P3(a):- COPY OF THE MONTHLY RETURN FOR JULY 2006.**

**EXT.P3(b):- COPY OF THE MONTHLY RETURN FOR AUGUST 2006.**

**EXT.P3)c):- COPY OF THE MONTHLY RETURN FOR SEPTEMBER 2006.**

**EXT.P3(d):- COPY OF THE MONTHLY RETURN FOR OCTOBER 2006.**

**EXT.P3(e):- COPY OF THE MONTHLY RETURN FOR NOVEMBER 2006.**

**EXT.P3(f):- COPY OF THE MONTHLY RETURN FOR DECEMBER 2006.**

**EXT.P4:- COPY OF THE BANK STATEMENT FOR AUGUST 2006.**

**EXT.P4(a):- COPY OF THE BANK STATEMENT FOR SEPTEMBER, 2006.**

**EXT.P5:- COPY OF THE NOTICE DT.18.6.05 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.**

**EXT.P6:- COPY OF THE LOCAL DELIVERY BOOK PROVING THE FILING OF RETURNS FROM 20-.4.05 TO 28.2.2007.**

**EXT.P7:- COPY OF THE PROFIT AND LOSS ACCOUNTS FOR THE YEARS 03-04.**

**E.XT.P7(a):- COPY OF THE PROFIT AND LOSS ACCOUNTS FOR THE YEARS 04-05.**

**/TRUE COPY/**

**tss**

K.BALAKRISHNAN NAIR, J.

---

W.P.(C).No.9355 of 2007-L

---

Dated this the 26th day of March, 2007

**JUDGMENT**

The petitioner challenges Exts.P1 and P2 assessment orders. She has a right of appeal against those orders, before the appellate forum. But, she has chosen to file this writ petition on the allegation that no notice was served on her. So, the files were called for. The files would show that the notice was sent to the last known address of the petitioner. It was returned with the endorsement 'left'. Later, notice was served by affixture and the assessment orders were passed. The petitioner attacks the procedure followed in serving the notice. According to her, it is not in conformity to the provisions of Section 55-B of the Kerala General Sales Tax Act. Even assuming that the order is passed without notice, this Court need not interfere with the same as the petitioner has remedies under the Statute. But, the learned counsel for the petitioner points out that she has to incur an expenditure of Rs.70,000/- towards court fee, to challenge the orders. I think the said scheme of the Act cannot be got over by taking recourse to the provisions of Article 226 of the Constitution of India. It is true, if an order is passed in violation of the principles of natural justice even if there is statutory remedy that this Court can interfere. So far no Court has said that this Court must interfere in such cases. It is a matter within the discretion of the Court. Having regard to the dispute raised in this writ petition, it has to

be heard and decided whether there is proper notice or not. It is not a case of total lack of notice. In view of the said position, I am not inclined to exercise the discretionary jurisdiction under Article 226 of the Constitution of India.

The Writ Petition is dismissed without prejudice to the rights of the petitioner to invoke the appellate remedy. It is made clear that I am not inclined to express any opinion on the contention of the petitioner regarding lack of jurisdiction.

K.BALAKRISHNAN NAIR, JUDGE.

MS